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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/694,274 | 10/29/2003 | Mitsuo Watanabe | 1341.1163 | 2798 |
| 21171 | 7590 | 01/11/2005 | EXAMINER | |
| STAAS & HALSEY LLP SUITE 700 1201 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005 | | | CAPUTO, LISA M | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2876 | |

DATE MAILED: 01/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/694,274

Applicant(s)

WATANABE ET AL.

Examiner

Lisa M Caputo

Art Unit

2876

—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

THE REPLY FILED 06 December 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-8.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


KARL D. FRECH
PRIMARY EXAMINER

Continuation of 5. does NOT place the application in condition for allowance because: the arguments are not persuasive. Applicant has filed a letter requesting the withdrawal of the final office action of October 4, 2004 since it has been deemed by the applicant to be a premature final rejection. Applicant has argued that the amendment of July 8, 2004 made prior to the final rejection has amended the preamble of claims 1-4 for form only. Examiner respectfully disagrees and submits that prior to the amendment of July 8, 2004 claim 1 recited "A bar code reader having an arrangement to communicate with a host apparatus in a POS system, comprising:...a term expiration check unit..." and hence it was interpreted that the system, and mainly, the host apparatus comprised a term expiration check unit that checked whether or not a term of an article had expired. In the amendment and arguments filed July 8, 2004, applicant recited in claim 1 that there is "A bar code reader having an arrangement to communicate with a host apparatus in a POS system, the bar code reader comprising:...a term expiration check unit.." and applicant argued that it was not the host apparatus but the bar code reader that comprised the term expiration check unit which checked the term expiration. Hence, it was then interpreted by the examiner that the bar code reader, not the host apparatus comprised the term expiration check unit, which indeed changes the scope of the claims and is not merely an amendment for form only. In addition, although the amendment was made in the preamble, the limitations were brought to life within the body of the claim. Therefore examiner was not premature in making a final rejection since the applicant's amendment necessitated the new grounds of rejection.